



July 9, 2002

Mr. David Galbraith
Assistant General Counsel
Houston Independent School District
3830 Richmond Avenue
Houston, Texas 77027-5838

OR2002-3709

Dear Mr. Galbraith:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 165355.

The Houston Independent School District (the "district") received a written request for certain records pertaining to an assistant principal. You state that most of the responsive information has been released to the requestor. You contend, however, that two documents you submitted to this office are excepted from required public disclosure pursuant to section 552.101 of the Government Code in conjunction with section 21.355 of the Education Code.

Section 21.355 of the Education Code makes confidential "[a]ny document evaluating the performance of a teacher or administrator." This office has interpreted this section to apply to any document that evaluates, as that term is commonly understood, the performance of a teacher or administrator. Open Records Decision No. 643 (1996). However, based on our review of the submitted documents, which consist of complaints regarding particular, isolated incidents, we are unable to conclude that such information constitutes evaluations for purposes of section 21.355 of the Education Code. We therefore conclude that the district may not withhold the submitted records pursuant to section 21.355.

We note, however, that you have redacted information from the documents at issue that appears to consist of the names of students, which must be withheld from the public pursuant to the federal Family Educational Rights and Privacy Act of 1974 ("FERPA"), 20 U.S.C. § 1232g. FERPA provides that no federal funds will be made available under any applicable program to an educational agency or institution that releases personally identifiable information, other than directory information, contained in a student's education records to anyone but certain enumerated federal, state, and local officials and institutions, unless

otherwise authorized by the student. *See* 20 U.S.C. § 1232g(d). “Education records” are those records that contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution. *Id.* § 1232g(a)(4)(A).

Information must be withheld from required public disclosure under FERPA only to the extent “reasonable and necessary to avoid personally identifying a particular student.” Open Records Decision Nos. 332 (1982), 206 (1978). We therefore conclude that the district must withhold the redacted students’ names pursuant to FERPA. The remaining submitted information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body’s intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general’s Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Pearle".

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/RWP/sdk

Ref: ID# 165355

Enc: Submitted documents

c: Mr. Rocco Girardi
P.O. Box 111506
Houston, Texas 77293
(w/o enclosures)